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**Electronically Filed on:**  
**February 12, 2007**

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18 Attorneys for Fertitta Enterprises, Inc.,  
 19 and designated Nevada counsel for Estate of Tabas

20 **UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

21 In re:

22 USA COMMERCIAL MORTGAGE COMPANY,  
 23 Debtor.

24 Case No. BK-S-06-10725-LBR

25 Case No. BK-S-06-10726-LBR

26 Case No. BK-S-06-10727-LBR

27 Case No. BK-S-06-10728-LBR

28 Case No. BK-S-06-10729-LBR

29 USA CAPITAL REALTY ADVISORS, LLC,  
 30 Debtor.

31 Chapter 11

32 USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
 33 LLC,  
 34 Debtor.

35 **DECLARATION OF JANET L.**  
**CHUBB IN SUPPORT OF REPLY**  
**OF ESTATE OF DANIEL TABAS**  
**AND FERTITTA ENTERPRISES,**  
**INC., TO DEBTORS'**  
**OPPOSITION TO MOTION FOR**  
**RELIEF FROM THE**  
**AUTOMATIC STAY TO**  
**TERMINATE THE LOAN**  
**SERVICING AGREEMENT FOR**  
**THE DIRECT LOAN TO COLT**  
**GATEWAY LLC**

36 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 37 Debtor.

38 USA SECURITIES, LLC,  
 39 Debtor.

40 Affects:

- 41  All Debtors
- 42  USA Commercial Mortgage Company
- 43  USA Capital Realty Advisors, LLC
- 44  USA Capital Diversified Trust Deed Fund, LLC
- 45  USA Capital First Trust Deed Fund, LLC
- 46  USA Securities, LLC

47 Hearing Date: February 15, 2007  
 48 Hearing Time: 9:30 am

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1 I, JANET L. CHUBB, declare pursuant to 28 U.S.C. § 1746(2), that:

2 1. With the exception of those matters stated upon information and belief, I have  
 3 personal knowledge of each of the matters stated herein and could testify competently to the same  
 4 under oath in a court of law if called upon.

5 2. I am counsel for Fertitta Enterprises, Inc., and designated Nevada counsel for the  
 6 Estate of Daniel Tabas. I also am a member in good standing licensed to practice before all state  
 7 and federal courts in the State of Nevada.

8 3. On February 7, 2007, the parties participated in a teleconference involving Fertitta's  
 9 chief financial officer, William J. Bullard; Tom Allison and Bob Koe for the debtors; Annette  
 10 Jarvis, counsel for the debtors; Jonathan Bart, lead counsel for the Estate of Tabas; and Louis  
 11 Bubala and myself, counsel for Fertitta and designated Nevada counsel for the Estate of Tabas.

12 4. During the teleconference, Mr. Allison stated he had reached an agreement with the  
 13 borrower to pay the direct lenders in full on the Colt Gateway loan.

14 5. Mr. Allison agreed to provide the written terms of the agreement as well as a  
 15 payoff letter to Fertitta and the Estate of Tabas.

16 6. To date, Fertitta and the Estate of Tabas have not received anything written from  
 17 Mr. Allison or debtors.

18 7. Mr. Bart, lead counsel for the Estate of Tabas, has spoken with Colt Gateway's  
 19 counsel, and Colt Gateway's counsel informed Mr. Bart that it is ready and willing to pay off the  
 20 loan.

21 8. Mr. Bullard and I reviewed the plan prior to filing the motion and were unaware  
 22 that debtors asserted that the plan transferring the loan-servicing rights to Diversified.

23 9. After the Court denied the motion for an order shortening time, I inquired with  
 24 counsel for the Diversified Committee as to the basis of the "transfer."

25 10. Mr. Hermann sent me an email that directed me to Plan Section IV.D.2 concerning  
 26 the post-effective-date form of Diversified Trust Deed Fund, as evidenced by the true and accurate  
 27 copy of the email attached as Reply Ex. 5, 1/20/07 Hermann-Chubb email.

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1        After careful and repeated readings of the cited section, I believe the Diversified  
2 Committee is referring to a portion of one sentence and a parenthetical as the basis for its "rights"  
3 in the loan-servicing agreement: "The assets of the DTDF Estate retained by the Post-Effective  
4 Date include the DTDF loans (including but not limited to the rights associated with the former  
5 Epic and Sheraton Loans and the Loan Servicing Agreements for the Excluded DTDF loans)," as  
6 evidenced in Reply Ex. 6, Plan at 50 (emphasis added).

7       12. Prior to this motion, neither debtors or the Diversified Committee engaged in any  
8 conversations with Mr. Bullard or myself about the fact that USA Commercial was "transferring"  
9 its servicing rights "to" Diversified.

10       13. The Unsecured Creditors Committee also interpreted the plan such that USA  
11 Commercial's loan-servicing rights went to the USA Commercial Liquidating Trust, not  
12 Diversified, as evidenced by the true and accurate copy of the email attached as Reply Ex. 7,  
13 1/20/07 Charles-Chubb email.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 12<sup>th</sup> day of February, 2007.

//s//Janet L. Chubb  
**JANET L. CHUBB, ESQUIRE**  
Counsel for Fertitta Enterprises, Inc.,  
and Estate of Tabas

## CERTIFICATE OF SERVICE

1. On February 12, 2007, I served the following document(s):

**DECLARATION OF JANET L. CHUBB IN SUPPORT OF REPLY OF ESTATE OF  
DANIEL TABAS AND FERTITTA ENTERPRISES, INC., TO DEBTOR'S OPPOSITION  
TO MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO TERMINATE THE  
LOAN SERVICING AGREEMENT  
FOR THE DIRECT LOAN TO COLT GATEWAY LLC**

2. I served the above-named document(s) by the following means to the persons as listed below:

- a. **ECF System** (attach the "Notice of Electronic Filing" or list all persons and addresses):

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■ b. **United States mail, postage fully prepaid** (list persons and addresses):

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USA COMMERCIAL MORTGAGE ET AL.  
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9 c. **Personal Service** (list persons and addresses):

I personally delivered the document(s) to the persons at these addresses:

9 For a party represented by an attorney, delivery was made by handing the document(s) to the attorney or by leaving the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

9 For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

- d. **By direct email (as opposed to through the ECF System)** (list persons and email addresses):

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Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time

1 after the transmission, any electronic message or other indication that the  
2 transmission was unsuccessful.

3       9 e. **By fax transmission** (list persons and fax numbers):

4              Based upon the written agreement of the parties to accept service by fax  
5 transmission or a court order, I faxed the document(s) to the persons at the  
6 fax numbers listed below. No error was reported by the fax machine that I  
7 used. A copy of the record of the fax transmission is attached.

8       9 f. **By messenger:**

9              I served the document(s) by placing them in an envelope or package  
10 addressed to the persons at the addresses listed below and providing them to  
11 a messenger for service. (A declaration by the messenger must be attached  
12 to this Certificate of Service).

13              **I declare under penalty of perjury that the foregoing is true and correct.**

14              DATED this 12<sup>th</sup> day of February, 2007.

15              \_\_\_\_\_  
16              C. Grinstead  
17              Name

18              \_\_\_\_\_  
19              //s// C. Grinstead  
20              Signature

21              JONES VARGAS  
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